



**Before The  
State Of Wisconsin  
DIVISION OF HEARINGS AND APPEALS**

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In the Matter of Claims Against the Dealer Bond  
of US Financial, d/b/a Awesome Autos 2

Case No: DOT-15-0029

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**PRELIMINARY DETERMINATION**

On October 16, 2015, Margaret Quast filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of US Financial, d/b/a Awesome Autos 2, (Dealer). Pursuant to the procedures set forth at Wis. Admin. Code § Trans 140.26, a Public Notice to File Dealer Bond Claims was published in the Oshkosh Northwestern, a newspaper published in Oshkosh, Wisconsin. The notice informed other persons who may have claims against the Dealer to file them with the Department by January 29, 2016. No additional claims were filed. Margaret Quast's claim was forwarded by the Department to the Division of Hearings and Appeals. This Preliminary Determination is based on the documents in the file and constitutes the preliminary determination required by Wis. Admin. Code § Trans 140.26(4)(a).

In accordance with Wis. Stat. § 227.47 and 227.53(1)(c) the PARTIES to this proceeding are certified as follows:

Margaret Quast  
4326 County Road "T"  
Oshkosh, WI 54904

US Financial, d/b/a Awesome Autos 2  
5095 State Road 21  
Oshkosh, WI 54904-7115

Auto Owners Insurance Company  
PO Box 30660  
Lansing, MI 48909

### Findings of Fact

1. US Financial, d/b/a Awesome Autos 2, (Dealer) is licensed by the Wisconsin Department of Transportation (Department) as a motor vehicle dealer. The Dealer's facilities are located at 5095 State Road 21, Oshkosh, Wisconsin.

2. The Dealer has had a bond in force satisfying the requirements of Wis. Stat. § 218.0114(5) since November 2, 2010 (Bond #66096416 from Auto Owners Insurance Company).

3. On March 2, 2015, Margaret Quast (Quast) purchased a 2005 Cadillac STS automobile, vehicle identification number 1G6DC67A550189877, from the Dealer. According to the purchase contract, Quast paid \$19,012.00, including tax and registration fees, for the vehicle. The purchase price also included \$2,800.00 for a service contract. Quast purchased the vehicle for her daughter Lyn Burgess (Burgess) to use.

4. Within a week of Quast purchasing the vehicle, Burgess noticed a fluid leak and took the vehicle back to the Dealer. The Dealer repaired the leak by replacing the radiator and a cooling line, but the next week the radiator line "blew" stranding Burgess on the side of the road. Burgess had the vehicle towed to a repair shop, Little Wolf Automotive in Manawa, Wisconsin. The mechanic at Little Wolf Automotive concluded that the Dealer had used the wrong type of hose for a transmission cooler line when it repaired the fluid leak. The mechanic installed the correct hose from the transmission to the radiator. The total charge to have the vehicle towed and repaired was \$715.37.

5. On April 1, 2015, Quast filed a complaint with the Department's — Dealer Section against the Dealer. Quast told the investigator for the Department that she was not given a copy of the Wisconsin Buyers Guide for the vehicle by the Dealer. The investigator contacted the Dealer about Quast's complaint. The Dealer refused to provide any records for the deal to the investigator. The investigator also contacted the mechanic who worked on Quast's vehicle at Little Wolf Automotive. The mechanic confirmed that the Dealer had used the wrong type of hose to repair the fluid leak. The mechanic also informed the investigator that he had contacted the warranty company about covering the cost of the repair, but was told the warranty would not cover the repairs. The investigator was unable to resolve the complaint and advised Quast to file a claim against the Dealer's surety bond.

6. Before Quast filed a claim, Burgess took the vehicle back to Little Wolf Automotive and had the vehicle inspected. Little Wolf Automotive provided her with an itemized list of all repair the vehicle needed. On October 16, 2015, Quast filed a claim against the surety bond of the Dealer with the Department of Transportation. The amount of the claim is \$4,602.09, and is itemized as \$798.59, the amount already paid for repairs to the vehicle, plus \$3,803.50, the estimate for additional repairs needed.

7. Licensed motor vehicle dealers are required by Wis. Admin. Code § Trans 139.04(4) to disclose "significant existing mechanical defects" in used vehicles offered

for sale. Dealers are required to disclose defects that can be discovered during a reasonable pre-sale inspection on a Wisconsin Buyers Guide form that is displayed on the vehicle at the time it is offered for sale. The problems Burgess experienced with the vehicle immediately after it was purchased should have been discovered during a reasonable presale inspection of the vehicle and should have been disclosed on a Wisconsin Buyers Guide displayed on the automobile at the time it was offered for sale. The Dealer did not provide a copy of the Wisconsin Buyers Guide to Quast or the Department's investigator. Presumably none of the problems with the vehicle were disclosed. Either the Dealer failed to perform a reasonable presale inspection of the vehicle and discover the defects or, if a reasonable presale inspection was performed, the Dealer failed to properly disclose the result of the inspection on the Wisconsin Buyers Guide.

8. The Dealer's failure to conduct a reasonable presale inspection of the vehicle and/or accurately disclose any significant existing defects discovered during a presale inspection on a Wisconsin Buyers Guide constitutes a violation of Wis. Admin. Code §§ Trans 139.04(5) and (6)(a). Violations of these sections, in turn, constitute a violation of Wis. Stat. §§ 218.0116(1)(bm) and/or (gm). Quast sustained a loss as the result of this violation.

9. Quast's claim arose on March 2, 2015, the day she purchased the vehicle that is the subject of his claim against the surety bond of the Dealer. The bond claim was filed within three years of the ending date of the one-year period the bond issued by the Auto Owners Insurance Company was in effect and is, therefore, a timely claim.

10. Quast submitted documentation to support a claim in the amount of \$4,518.87, the amount she has paid for repairs plus the amount of the estimate for the remaining needed repairs. This amount is less than her bond claim because the repairs Quast is seeking reimbursement for include an oil change. An oil change is routine maintenance, not a mechanical defect of the vehicle. The charge for the oil change was \$83.32. This amount is not allowable and has been subtracted from the claim.

### Discussion

The procedure for determining claims against dealer bonds is set forth at Wis. Admin. Code Chapter Trans 140, Subchapter II. Wis. Admin Code § Trans 140.21(1) provides in relevant part:

A claim is an allowable claim if it satisfies each of the following requirements and is not excluded by sub. (2) or (3):

(a) The claim shall be for monetary damages in the amount of an actual loss suffered by the claimant.

(b) The claim arose during the period covered by the security.

(c) The claimant's loss shall be caused by an act of the licensee, or the [licensee's] agents or employees, which is grounds for suspension or revocation of any of the following:

1. A salesperson license or a motor vehicle dealer license, in the case of a secured salesperson or motor vehicle dealer, pursuant to s. 218.0116 (1) (a) to (gm), (im) 2., (j), (jm), (k), (m) or (n) to (p), Stats.

...

(d) The claim must be made within 3 years of the last day of the period covered by the security. The department shall not approve or accept any surety bond or letter of credit which provides for a lesser period of protection.

Accordingly, to allow Quast's claim against the Dealer's surety bond a finding must be made that the Dealer violated one of the sections of Wis. Stat. § 218.0116(1), identified in Wis. Admin. Code § Trans 140.21(1)(c)1, and that the violation caused the loss claimed. Burgess began experiencing problems with the vehicle purchased from the Dealer as soon as Quast purchased it. The Dealer either failed to perform a reasonable presale inspection of the vehicle or to disclose the results of the presale inspection on a Wisconsin Buyers Guide displayed on the vehicle when it was offered for sale. Either way the Dealer's actions constitute a violation of Wis. Admin. Code §§ Trans 139.04(5) and (6)(a). A violation of either of these sections, in turn, constitutes a violation of Wis. Stat. §§ 218.0116(1)(bm) and/or (gm). Wis. Stat. §§ 218.0116(1)(bm) and (gm) are both sections identified in Wis. Admin. Code § Trans 140.21(1)(c)1. Quast sustained a loss as a result of this violation.

#### Conclusions of Law

1. The claim of Margaret Quast arose on March 2, 2015, the day she purchased the subject vehicle from the Dealer. The surety bond issued to the Dealer by Auto Owners Insurance Company covers a one-year period commencing on November 2, 2014. The claim arose during the period covered by the surety bond.

2. Margaret Quast filed a claim against the motor vehicle dealer bond of the Dealer on October 16, 2015. The bond claim was filed within three years of the last day of the period covered by the surety bond. Pursuant to Wis. Admin. Code § Trans 140.21(1)(d), the claim is timely.

3. Margaret Quast's loss was caused by an act of the Dealer that would be grounds for suspension or revocation of its motor vehicle dealer license. Margaret Quast has supplied documentation to support a claim in the amount of \$4,518.87. Pursuant to Wis. Admin. Code § Trans 140.21(1)(c), the claim is allowable.

4. The Division of Hearings and Appeals has authority to issue the following order.

Order

The claim filed by Margaret Quast against the motor vehicle dealer bond of US Financial, d/b/a Awesome Autos 2, is APPROVED in the amount of \$4,518.87. Auto Owners Insurance Company shall pay Margaret Quast this amount for her loss attributable to the actions of US Financial, d/b/a Awesome Autos 2.

Dated at Madison, Wisconsin on March 18, 2016.

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By: \_\_\_\_\_  
Mark F. Kaiser  
Administrative Law Judge